BILL NO. S-90-05-19

SPECIAL ORDINANCE NO. S-109-90

AN ORDINANCE approving Contract **FOR RES. #6148-90, BLUFFTON RD. RESURFACING PROJECT** between **WAYNE ASPHALT & CONST.** and the City of Fort Wayne, Indiana, in connection with the Board of Public Works and Safety.

NOW, THEREFORE, BE IT ORDAINED BY THE COMMON COUNCIL OF THE CITY OF FORT WAYNE, INDIANA:

SECTION 1. That the Contract **FOR RES. #6148-90** by and between **WAYNE ASPHALT & CONST.** and the City of Fort Wayne, Indiana, in connection with the Board of Public Works and Safety, is hereby ratified, and affirmed and approved in all respects, respectfully for:

resurfacing Bluffton Road from a point 300 ft.+/- south of Old Trail Rd. to Waynewood Dr. and on Bluffton Rd. from a point 300+/- south of Lower Huntington Rd. to Baer Field Thruway;

involving a total cost of One Hundred Eighty-Seven Thousand Six Hundred Twenty-Five and no/100 Dollars ($187,625.00).

SECTION 2. Prior Approval has been requested from Common Council on March 27, 1990. Two copies of said Contract are on file with the Office of the City Clerk and made available for public inspection, according to law.

SECTION 3. That this Ordinance shall be in full force and effect from and after its passage and any and all necessary approval by the Mayor.

Mark E. Giaquinta
Councilmember

APPROVED AS TO FORM
AND LEGALITY

J. Timothy McCaulay
J. Timothy McCaulay, City Attorney

CONTRACT NO. 6148-90

BLUFFTON ROAD RESURFACING PROJECT (COIT)

BOARD ORDER NO. 20-90 **WORK ORDER NO.** 10,833

THIS CONTRACT made and entered into in triplicate this 2nd **day of** May, **19**92, **by and between** WAYNE ASPHALT & CONSTRUCTON CO., **herein called CONTRACTOR, and the City of Fort Wayne, Indiana, an Indiana Municipal Corporation, acting by and through the Mayor and the Board of Public Works and Safety, herein called OWNER;**

WITNESSETH, that the CONTRACTOR and the OWNER, for the considerations hereinafter named, agree as follows:

ARTICLE 1: SCOPE OF WORK

CONTRACTOR shall furnish all labor, material, equipment, tools, power, transportation, miscellaneous equipment, etc., necessary for the following:

RES. NO. 6148-90 BLUFFTON ROAD RESURFACING PROJECT (COIT)

all according to RES. NO. 6148-90, **Drawing No.** _____, **Sheets** _____, **and do everything required by this contract and the other documents constituting a part hereof.**

ARTICLE 2: THE CONTRACT SUM

The OWNER shall pay CONTRACTOR for the performance of the contract the unit price sum of $ 187,625.00. **In the event the amount of work is increased or decreased by OWNER, the contract sum shall be increased or decreased according to the unit price schedule set forth in the CONTRACTOR's Proposal.**

ARTICLE 3: PROGRESS PAYMENTS

The OWNER shall make payments on account of the contract as provided herein, as follows:

Monthly progress payments will be made by OWNER upon submission of a statement of quantities of work completed and/or materials supplied to the job site as of the end of each month. On or about the 15th day of the following month, ninety (90%) percent of the value of the work performed up to the first day of that month (based on the contract price of labor and materials incorporated in the work) and as estimated by the CONTRACTOR and approved or revised by the Engineering Department

of the OWNER less the aggregate of previous payments, will be paid by OWNER to the CONTRACTOR.

ARTICLE 4: ACCEPTANCE AND FINAL PAYMENT

Final payment shall be due at the time the work is fully completed and accepted and the contract is fully performed.

Upon filing of a Completion Affidavit by the CONTRACTOR that the work is ready for final inspection and acceptance, the Board of Public Works and Safety will direct the Engineering Department of the OWNER to promptly make such inspection. When the Engineering Department finds the work acceptable under the contract, and the contract is fully performed, it shall so inform the Board of Public Works and Safety which shall issue a final certificate stating that the work provided for in this Contract has been completed and is accepted. Thereupon the entire balance of the Contract sum shall be due and payable to the CONTRACTOR; provided only that CONTRACTOR shall first furnish OWNER, if requested to do so, satisfactory evidence that all persons who have supplied labor, material, or equipment for the work have been fully paid, and all required manpower utilization reports for this project have been submitted.

ARTICLE 5: WORKMEN'S COMPENSATION ACT

The CONTRACTOR will furnish immediately a certificate from the Industrial Board of the State of Indiana, that he has complied with the Workmen's Compensation Act in accordance with Statutes of the State of Indiana and Ordinances of the City of Fort Wayne.

Any judgment rendered against the City of Fort Wayne in any suits for damages for injury to real or personal property, or for any injury sustained by any person growing out of any act or doing of Contractor, or its agents, employees or workmen or any judgment of any court or award of any Board of Arbitrators or of the Industrial Board of the State of Indiana rendered against the City of Fort Wayne in any suit or claim arising under said Workmen's Compensation for accidental injuries or death suffered by his employees or the employees of any Subcontractor or Subcontractors in the course of their employment, when notice of the pendency of such suit, hearing or arbitration shall have been given said CONTRACTOR, shall be conclusive against CONTRACTOR as to amount, liability and all other things pertaining thereto; it being the intent of the parties hereto that CONTRACTOR indemnify and hold harmless OWNER in the premises.

ARTICLE 6: NONDISCRIMINATION OF LABOR

The CONTRACTOR further agrees to be bound by Section 15-13 (as amended), of the Code of the City of Fort Wayne, Indiana of 1974, passed by the Common Council of the City of Fort Wayne, Indiana as General Ordinance No. G-34-78 (as amended) on December 12th, 1978. The successful bidder shall file a Manpower Utilization Report for this project with the Compliance Office within ten (10) days after comple-

tion of construction or upon request of the Office of Compliance.

ARTICLE 7: PREVAILING WAGE SCALE

The CONTRACTOR agrees to pay, and also require of his subcontractors that they pay wage rates on the work covered by this contract which shall not be less than the prescribed scale of wages as determined pursuant to the Statutes of the State of Indiana, and the Ordinances of the City of Fort Wayne according to the applicable wage scale as included in the bid documents.

ARTICLE 8: COMPONENT PARTS OF THIS CONTRACT

The following documents are as fully a part of the contract as if hereto attached or herein repeated:

a. Advertisement for Bids, for Contract No. 6148-90.
b. Instructions to Bidders for Contract No. 6148-90.
c. Contractor's Proposal Dated 3/14/90.
d. Ft. Wayne Engr. Dept. Drawing #_____.
e. Supplemental Specifications for Contract No. 6148-90.
f. Workman's Compensation Act, Statutes of the State of Indiana and Ordinances of the City of Fort Wayne.
g. Non-Discrimination of Labor, General Ordinance No. G-34-78 (as amended).
h. Prevailing Wage Scale.
i. Performance and Guaranty Bond.
j. Labor and Material Payment Bond.
k. Minority/Female Employment Hourly Utilization.
l. Right-of-Way Cut Permit.
m. Comprehensive Liability Insurance Coverage.
n. MBE/WBE Committment Form.
o. _____
p. _____

ARTICLE 9: GUARANTEE OF WORKMANSHIP

At the time of execution of this contract, the CONTRACTOR shall furnish a Performance and Guaranty Bond in favor of the City of Fort Wayne in the amount of the total value of the materials supplied and/or work performed under the terms of this contract. The said bond shall ensure the completion of the work covered hereunder and shall guarantee the materials and workmanship for a period of three (3) years following written acceptance of the work by the OWNER.

ARTICLE 10: INDEMNITY

CONTRACTOR shall furnish to OWNER, within ten (10) days of the date hereof, a certificate from an insuror acceptable to OWNER showing personal injury and property damage insurance, in force and issued in connection with the work to be performed under this Contract, in amounts satisfactory to OWNER and in accordance with the Statutes of the State of Indiana.

ARTICLE 11: ADJUSTMENTS OF DISPUTES

All questions or controversies which may arise between the CONTRACTOR and the OWNER under the provisions of this Contract shall be subject to the decision of the Director of Board of Public Works & Safety of the OWNER, and his decision shall be final and conclusive upon the parties.

Provided, however, no changes in the plans, specifications, or other phases of the work covered by this Contract will be permitted except on prior written authorization by the Board of Public Works and Safety.

ARTICLE 12: COMPLETION DATE

The CONTRACTOR agrees to complete the work specified in the contract within 7/31/90 consecutive calendar days after having been ordered by the OWNER to commence work under this contract.

ARTICLE 13: COUNCILMANIC APPROVAL

This Agreement, although executed on behalf of the OWNER by the Mayor and Board of Public Works and Safety of the City of Fort Wayne, Indiana, shall not be binding upon the OWNER unless and until the same shall have been ratified and approved by the Common Council of the City of Fort Wayne, Indiana, and should said Common Council fail to approve the same within ninety (90) days after the date hereof, then this Contract shall be and become wholly void.

ARTICLE 14:

This contract is governed by Laws of the State of Indiana.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement the day and year first above written.

(CONTRACTOR)

BY: Virgil E Watts V.

_____, President

BY: _____

_____, Secretary

CITY OF FORT WAYNE, INDIANA

BY: _____
Paul Helmke, Mayor

BOARD OF PUBLIC WORKS & SAFETY

_____
Charles E. Layton
Director of Public Works

_____
Michael McAlexander
Director of Public Safety

_____
Douglas M. Lehman
Director of Administration & Finance

ATTEST:

_____
Helen V. Gochenour, Clerk

ACKNOWLEDGMENT

STATE OF INDIANA:
SS:
COUNTY OF ALLEN:

BEFORE ME, a Notary Public, in and for said County and State, this 2nd day of May, 1990, personally appeared the within named Virgil E. Walters, who being by me first duly sworn upon their oaths say that they are the Vice Pres. and _____ respectively, of Wayne Asphalt and as such duly authorized to execute the foregoing instrument and acknowledged the same as the voluntary act and deed of Wayne Asphalt for the uses and purposes therein set forth.

IN WITNESS WHEREOF, hereunto subscribed my name, affixed my official seal.

CAROLYN S. ESCHMANN
NOTARY PUBLIC STATE OF INDIANA
ALLEN CO.
MY COMMISSION EXPIRES JUNE 21, 1991
ISSUED THRU INDIANA NOTARY ASSOC.

Carolyn S. Eschmann
NOTARY PUBLIC

_____
Type or Print Name of Notary

MY COMMISSION EXPIRES:_____

ACKNOWLEDGEMENT

STATE OF INDIANA)
) SS:
COUNTY OF ALLEN)

BEFORE ME, a Notary Public, in and for said County and State, this 2nd day of May, 19 90, personally appeared the within named Paul Helmke, Mayor of the City of Fort Wayne; Charles E. Layton, Michael McAlexander and Douglas M. Lehman, members of the Board of Public Works and Safety, City of Fort Wayne, Indiana; and Helen V. Gochenour, Clerk of the Board of Public Works and Safety, City of Fort Wayne, Indiana, to me personally known, who being by me duly sworn said that they are respectively the Mayor of the City of Fort Wayne, the Members and Clerk of the Board of Public Works and Safety of the City of Fort Wayne, Indiana, and that they signed said instrument on behalf of the City of Fort Wayne, Indiana, with full authority so to do and acknowledged said instrument to be the voluntary act and deed of said City for the uses and purposes therein set forth.

IN WITNESS WHEREOF, hereunto subscribed my name, affixed my official seal.

CAROLYN S. ESCHMANN
NOTARY PUBLIC STATE OF INDIANA
ALLEN COUNTY
MY COMMISSION EXPIRES JUNE 21, 1991
ISSUED THRU INDIANA NOTARY ASSOC.

Carolyn S. Eschmann
NOTARY PUBLIC

Type or Print Name of Notary

My Commission Expires: _____

Approved by the Common Council of the City of Fort Wayne on day of _____, 19_____.

Special Ordinance No._____.

UNITED STATES FIDELITY AND GUARANTY COMPANY

Baltimore, Maryland

(A Stock Company)

PERFORMANCE BOND

Approved by The American Institute of Architects

A. I. A. Document No. A-311 (February 1970 Edition)

BOND NUMBER.....

KNOW ALL MEN BY THESE PRESENTS:

That WAYNE ASPHALT & CONSTRUCTION COMPANY, INC.

..... as Principal, hereinafter called Contractor, and UNITED STATES FIDELITY AND GUARANTY COMPANY, a corporation organized and existing under the laws of the State of Maryland, Baltimore, Maryland, as Surety, hereinafter called Surety, are held and firmly bound unto .....

Board of Public Works & Safety, City of Fort Wayne

as Obligee, hereinafter called Owner, in the amount of One Hundred Eighty Seven Thousand, Six Hundred Twenty Five and 00/100---------- Dollars ($187,625.00), for the payment whereof Contractor and Surety bind themselves, their heirs, executors, administrators, successors and assigns, jointly and severally, firmly by these presents.

WHEREAS, Contractor has by written agreement dated March 21, 1990, entered into a contract with Owner for

Resolution #6148-90; Resurfacing of Bluffton Road

in accordance with drawings and specifications prepared by .....
(Here insert full name, title and address)

....., which contract is by reference made a part hereof, and is hereinafter referred to as the Contract.

NOW, THEREFORE, THE CONDITION OF THIS OBLIGATION is such that, if Contractor shall promptly and faithfully perform said Contract, then this obligation shall be null and void; otherwise it shall remain in full force and effect.

The Surety hereby waives notice of any alteration or extension of time made by the Owner.

Whenever Contractor shall be, and declared by Owner to be in default under the Contract, the Owner having performed Owner's obligations thereunder, the Surety may promptly remedy the default, or shall promptly

(1) Complete the Contract in accordance with its terms and conditions, or

(2) Obtain a bid or bids for completing the Contract in accordance with its terms and conditions, and upon determination by Surety of the lowest responsible bidder, or, if the Owner elects, upon determination by the Owner and the Surety jointly of the lowest responsible bidder, arrange for a contract between such bidder and Owner, and make available as Work progresses (even though there should be a default or a succession of defaults under the contract or contracts of completion arranged under this paragraph) sufficient funds to pay the cost of completion less the balance of the contract price; but not exceeding, including other costs and damages for which the Surety may be liable hereunder, the amount set forth in the first paragraph hereof. The term "balance of the contract price," as used in this paragraph, shall mean the total amount payable by Owner to Contractor under the Contract and any amendments thereto, less the amount properly paid by Owner to Contractor.

Any suit under this bond must be instituted before the expiration of two (2) years from the date on which final payment under the Contract falls due.

No right of action shall accrue on this bond to or for the use of any person or corporation other than the Owner named herein or the heirs, executors, administrators or successors of the Owner.

Signed and sealed this 21st day of March, 1990

In the presence of:

Melissa A. Beyler
(Witness)

YASTE, ZENT & RYE AGENCY, INC.

Carol J. Austin
(Witness)

WAYNE ASPHALT & CONSTRUCTION COMPANY, INC.

By Craig A. Mayer (Seal)
Principal

UNITED STATES FIDELITY AND GUARANTY COMPANY

By ..... (Seal)
Attorney-in-Fact

CERTIFIED COPY

GENERAL POWER OF ATTORNEY

No. 97796

Know all Men by these Presents:

That UNITED STATES FIDELITY AND GUARANTY COMPANY, a corporation organized and existing under the laws of the State of Maryland, and having its principal office at the City of Baltimore, in the State of Maryland, does hereby constitute and appoint Gerald A. Dahle, John J. Pikel, Donald T. Belbutowski and Diane T. Green

of the City of Fort Wayne, State of Indiana, its true and lawful attorneys in and for the State of Indiana

for the following purposes, to wit:

To sign its name as surety to, and to execute, seal and acknowledge any and all bonds, and to respectively do and perform any and all acts and things set forth in the resolution of the Board of Directors of the said UNITED STATES FIDELITY AND GUARANTY COMPANY, a certified copy of which is hereto annexed and made a part of this Power of Attorney; and the said UNITED STATES FIDELITY AND GUARANTY COMPANY, through us, its Board of Directors, hereby ratifies and confirms all and whatsoever anyone of the said Gerald A. Dahle and the said John J. Pikel and the said Donald T. Belbutowski and the said Diane T. Green

may lawfully do in the premises by virtue of these presents.

In Witness Whereof, the said UNITED STATES FIDELITY AND GUARANTY COMPANY has caused this instrument to be sealed with its corporate seal, duly attested by the signatures of its Vice-President and Assistant Secretary, this 27th day of November, A. D. 1985

UNITED STATES FIDELITY AND GUARANTY COMPANY.

(Signed) By W. Bradley Wallace
Vice-President.

(SEAL)

(Signed) John A. Umberger
Assistant Secretary.

STATE OF MARYLAND, BALTIMORE CITY, } ss:

On this 27th day of November, A. D. 1985, before me personally came W. Bradley Wallace, Vice-President of the UNITED STATES FIDELITY AND GUARANTY COMPANY and John A. Umberger, Assistant Secretary of said Company, with both of whom I am personally acquainted, who being by me severally duly sworn, said that they, the said W. Bradley Wallace and John A. Umberger were respectively the Vice-President and the Assistant Secretary of the said UNITED STATES FIDELITY AND GUARANTY COMPANY, the corporation described in and which executed the foregoing Power of Attorney; that they each knew the seal of said corporation; that the seal affixed to said Power of Attorney was such corporate seal, that it was so fixed by order of the Board of Directors of said corporation, and that they signed their names thereto by like order as Vice-President and Assistant Secretary, respectively, of the Company.

My commission expires the first day in July, A. D. 1986.

(SEAL) (Signed) Margaret M. Hurst
Notary Public.

STATE OF MARYLAND, BALTIMORE CITY, } Sct.

I, Saundra E. Banks, Clerk of the Circuit Court for Baltimore City, which Court is a Court of Record, and has a seal, do hereby certify that Margaret M. Hurst, Esquire, before whom the annexed affidavits were made, and who has thereto subscribed his name, was at the time of so doing a Notary Public of the State of Maryland, in and for the City of Baltimore, duly commissioned and sworn and authorized by law to administer oaths and take acknowledgment, or proof of deeds to be recorded therein. I further certify that I am acquainted with the handwriting of the said Notary, and verily believe the signature to be his genuine signature.

In Testimony Whereof, I hereto set my hand and affix the seal of the Circuit Court for Baltimore City, the same being a Court of Record, this 27th day of November, A. D. 1985

(SEAL) (Signed) Saundra E. Banks
Clerk of the Circuit Court for Baltimore City.

FS 3 (1-83)

PRINTED IN U.S.A.

Read the first time in full and on motion by De Haven, seconded by Edmonds, and duly adopted, read the second time by title and referred to the Committee on Public Works (and the City Plan Commission for recommendation) and Public Hearing to be held after due legal notice, at the Council Conference Room 128, City-County Building, Fort Wayne, Indiana, on ~~May 22, 1990~~, the ~~22nd~~, day of ~~May~~, 19~~90~~, at ~~11:45~~ o'clock ~~A~~.M.,E.S.T.

DATED: 5-22-90

Sandra E. Kennedy
SANDRA E. KENNEDY, CITY CLERK

Read the third time in full and on motion by Edmonds, seconded by Talarico, and duly adopted, placed on its passage. PASSED ~~LOST~~ by the following vote:

	AYES	NAYS	ABSTAINED	ABSENT
TOTAL VOTES	7			2
BRADBURY				✓
BURNS	✓			
EDMONDS	✓			
GiaQUINTA				✓
HENRY	✓			
LONG	✓			
REDD	✓			
SCHMIDT	✓			
TALARICO	✓			

DATED: 6-12-90.

Sandra E. Kennedy
SANDRA E. KENNEDY, CITY CLERK

Passed and adopted by the Common Council of the City of Fort Wayne, Indiana, as ~~(ANNEXATION)~~ ~~(APPROPRIATION)~~ (GENERAL) (SPECIAL) (~~ZONING~~ MAP) ORDINANCE ~~RESOLUTION~~ NO. S-109-90 on the 12th day of June, 19 90,

ATTEST
Sandra E. Kennedy
SANDRA E. KENNEDY, CITY CLERK

SEAL
Charles B. Redd
PRESIDING OFFICER

Presented by me to the Mayor of the City of Fort Wayne, Indiana, on the 13th day of June, 1990, at the hour of 11:45 o'clock A.M.,E.S.T.

Sandra E. Kennedy
SANDRA E. KENNEDY, CITY CLERK

Approved and signed by me this 22nd day of June, 19 90, at the hour of 3:00 o'clock P.M.,E.S.T.

PAUL HELMKE
PAUL HELMKE, MAYOR

Admn. Appr.

TITLE OF ORDINANCE: Contract for Res. #6148-90, Bluffton Rd. Resurfacing Project

DEPARTMENT REQUESTING ORDINANCE: Board of Public Works & Safety

SYNOPIS OF ORDINANCE: The contract for Res. #6148-90 is for resurfacing Bluffton Road from a point 300 ft. ± south of Old Trail Rd. to Waynewood Dr. and on Bluffton Rd. from a point 300 ± south of Lower Huntington Rd. to Baer Field Thruway. Wayne Asphalt & Construction Co. is the contractor. **PRIOR APPROVAL RECEIVED ON 3/27/90.**

S-50-05-15

EFFECT OF PASSAGE: Improved conditions as listed above

EFFECT OF NON PASSAGE:

MONEY INVOLVED (DIRECT COSTS, EXPENDITURE, SAVINGS) $187,625.00

ASSIGNED TO COMMITTEE:

BILL NO. S-90-05-19

REPORT OF THE COMMITTEE ON PUBLIC WORKS

MARK E. GiaQUINTA, CHAIRMAN
CLETUS R. EDMONDS, VICE CHAIRMAN
HENRY, SCHMIDT, TALARICO

WE, YOUR COMMITTEE ON PUBLIC WORKS TO WHOM WAS

REFERRED AN (ORDINANCE) (RESOLUTION) approving Contract FOR RES. #6148-90, BLUFFTON RD. RESURFACING PROJECT between WAYNE ASPHALT & CONST. and the City of Fort Wayne, Indiana, in connection with the Board of Public Works and Safety

HAVE HAD SAID (ORDINANCE) (RESOLUTION) UNDER CONSIDERATION AND BEG LEAVE TO REPORT BACK TO THE COMMON COUNCIL THAT SAID (ORDINANCE) (RESOLUTION)

DO PASS	DO NOT PASS	ABSTAIN	NO REC

DATED: 6-12-90.

Sandra E. Kennedy
City Clerk